

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CYWEE GROUP LTD.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No.: 18-571-RGA
)	
GOOGLE LLC,)	JURY TRIAL DEMANDED
)	
Defendant.)	

JOINT STATUS REPORT

Pursuant to the Court’s August 2, 2022 Order (D.I. 44), Plaintiff CyWee Group Ltd. (“CyWee”) and Defendant Google LLC (“Google”) respectfully submit the following Joint Status Report.

On July 28, 2021, CyWee and Google filed a Joint Status Report detailing the then-current status of the Google IPRs and the ZTE IPR and stating that neither party was requesting lifting the stay of the proceedings in this action. D.I. 42. As noted in the 2021 Joint Status Report, CyWee asserted in its Complaint in this action that Google infringes claim 14 of U.S. Patent No. 8,441,438 (“the ’438 Patent”) and claim 10 of U.S. Patent No. 8,552,978 (“the ’978 Patent”) in addition to one or more additional claims of both patents.¹ Google filed IPR petitions challenging certain claims in both patents. Subsequently, ZTE filed an IPR petition challenging certain claims of the ’438 Patent. In both the Google IPRs and ZTE IPR, the Board issued final written decisions finding all challenged claims unpatentable, including claim 10 of the ’978 Patent and claim 14 of the ’438 Patent. CyWee appealed those decisions. CyWee’s appeals remain pending, as discussed below.

¹ This case was stayed before service of infringement contentions identifying the asserted claims.

CyWee's Appeals of the Final Written Decisions in the Google IPRs

The Federal Circuit affirmed the PTAB's final written decisions finding all challenged claims unpatentable in the Google IPRs on March 16, 2021, and issued mandates on June 10, 2021.

Eleven days later, the Supreme Court issued its decision in *United States v. Arthrex*, 141 S. Ct. 1970 (2021), holding that “the unreviewable authority wielded by [Administrative Patent Judges] during [IPR] is incompatible with their appointment by the Secretary [of Commerce] to an inferior office” and thus gave rise to an Appointments Clause violation. 141 S. Ct. at 1985–86. In view of the *Arthrex* decision, CyWee filed a motion on August 30, 2021, requesting the Federal Circuit to recall its June 10, 2021 mandates and remand to the PTO for further proceedings consistent with *Arthrex*. On September 23, 2021, the Federal Circuit granted-in-part CyWee's motion by withdrawing its mandates and remanding to the PTO “for the limited purpose of allowing CyWee the opportunity to request Director rehearing of the final written decisions.” Dkt. 109, at 3.

On remand, CyWee requested Director rehearing, which was denied in a pair of decisions issued by PTO Commissioner Hirshfeld on January 7, 2022. CyWee then filed an amended notice of appeal from the denials of Director rehearing. The Federal Circuit stayed CyWee's appeals on May 9, 2022, pending the Federal Circuit's mandate in *Arthrex, Inc. v. Smith & Nephew, Inc.*, Fed. Cir. No. 18-2140 (“*Arthrex II*”).

CyWee's Appeal of the Final Written Decision in the ZTE IPR

On June 30, 2021, before any decision by the Federal Circuit on the merits of CyWee's appeal of the ZTE IPR final written decision, CyWee filed a motion requesting the Federal Circuit to dismiss its appeal and remand in view of the Supreme Court's *Arthrex* decision. The Federal

Circuit ordered a remand, and on remand CyWee's request for Director rehearing was denied in a decision issued by PTO Commissioner Hirshfeld.

CyWee filed an amended notice of appeal from the denial of Director rehearing, and then filed its opening brief on July 15, 2022.

Dated: August 8, 2022

Respectfully submitted,

/s/ Stamatios Stamoulis

Stamoulis & Weinblatt LLC

Stamatios Stamoulis (#4606)
Richard C. Weinblatt (#5080)
800 N. West Street, Third Floor
Wilmington, Delaware 19801
Telephone: (302) 999-1540
stamoulis@swdelaw.com
weinblatt@swdelaw.com

The Shore Law Firm

Michael W. Shore (Texas 18294915)
901 Main Street, Suite 3300
Dallas, Texas 75202
Telephone (214) 593-9110
mshore@shorechan.com

COUNSEL FOR PLAINTIFF
CYWEE GROUP, LTD.

/s/ Kelly E. Farnan

Frederick L. Cottrell, III (#2555)
Kelly E. Farnan (# 4395)
Richards, Layton & Finger, P.A.
One Rodney Square
920 N. King Street
Wilmington, DE 19801
(302) 651-7700
cottrell@rlf.com
farnan@rlf.com
mosley@rlf.com

OF COUNSEL:

Darin W. Snyder
Luann L. Simmons
David S. Almeling
Bill Trac

O'MELVENY & MYERS LLP

Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
(415) 984-8700

COUNSEL FOR DEFENDANT
GOOGLE LLC